

To: Mary Worzala, Advanced Engineering

From: Artur Tunyan

Date: November 25, 2002

Re: CLARIFICATIONS ON APPLICABILITY THE TAX PRIVILEGES SPECIFIED BY THE ARMENIAN
LEGISLATION FOR THE USA FINANCED PROJECTS AND THEIR CONTRACTORS

SECTION 1. BACKGROUND

In accordance with the request on providing legal services to AEAI (hereinafter Client) a *LEGAL BRIEF ON THE PROPOSED FRAMEWORK FOR THE ESTABLISHMENT AND OPERATION OF THE ENERGY EFFICIENCY REVOLVING FUND (EERF)* was delivered on September 13, 2002 to the Client. In addition to that further the Client has requested providing legal advice on applicability of VAT to the activities of the proposed Foundation as follows:

The request of AEAI is to clarify whether the Government decree regarding VAT exemptions for USAID contractors will be valid for the borrowers of the Revolving Fund if:

- a) The borrowers take credits from the Revolving Fund and return it to the Fund
- b) The borrowers receive the credit amounts from USAID directly and then return it to the Fund.

SECTION 2. SUMMARY ANSWERS

- The Law of the Republic of Armenia "On VAT" specifies that certain types of financial activities (including crediting, lending) are overall VAT exempt and VAT is not applicable to such kind of activities.
- Special tax exemptions and privileges are applicable to the USA governmental authorities and private organizations conducting activities related with providing the technical assistance and similar help to Armenia. This is regulated by the Law of the Republic of Armenia "On Application of Privileges and the Exemptions set for Tax, Customs, Mandatory Payments in accordance with the Agreement signed on December 15, 1992 between the Government of the Republic of Armenia and the Government of the United States of America "On Cooperation and easy Supervision of Humanitarian and Technical Economic Assistance" (hereinafter "the Law"). In addition to the mentioned, the Minister of State Revenue has signed an order N02/1054, dated September 15, 2000, which clearly specifies the application of privileges and some peculiarities of tax exemption set by the mentioned Law. Accordingly, in accordance with the Law any entity or organization, which is considered as implementing the Project (sponsored by the USA) on the technical economical assistance to Armenia, may seek certain tax privileges specified by the Law.

- Generally, the Law does not provide tax exemptions for the persons directly not contracting with the USA governmental authorities or private organizations implementing humanitarian and technical economical assistance in Armenia.

SECTION 3: LEGAL ANALYSIS

1. The VAT law specifies certain activities that are exempt for VAT purposes. It is clearly specified that so-called “financial services” are exempted and no VAT is applicable to these activities. Particularly, “financial services” means lending and crediting, financing, etc. (please, see section TAXATION ISSUES, Part 4.6 of Legal Brief, dated September 13, 2002 and Article 15 (17) of the Law on VAT).

The mentioned above means that in any case no VAT is applicable to the Foundation, borrower or any other third person involved directly in lending or crediting transaction. This condition is applicable for both cases, if:

- a) The borrowers take credits from the Revolving Fund and return it to the Fund, and if
- b) The borrowers receive the credit amounts from USAID directly and then return it to the Fund.

2. The Law may be applicable to the Foundation (resident legal entity registered in Armenia) if the Project implemented by the Foundation is approved and agreed by the Armenian Government or another State Body authorized to approve the implementation of the Project. Accordingly, the founders (for example, USAID) may request the Government of Armenia to include the Foundation in the list of the USA sponsored projects seeking tax privileges in accordance with the Law. In that case all privileges set by the Law (in the extent currently applicable to the USAID, for example) would be also applicable to the Foundation.

End of Memo